

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL CRUZ,

Defendant and Appellant.

E065497

(Super.Ct.No. FWV1301546)

OPINION

APPEAL from the Superior Court of San Bernardino County. Jon D. Ferguson,
Judge. Affirmed.

John E. Edwards, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

After resentencing, defendant and appellant Daniel Cruz is serving a six-year,
second-strike prison term for evading a police officer under Vehicle Code section 2802.2,
subdivision (a). Initially, defendant was also convicted of transporting methamphetamine
under Health and Safety Code section 11379, subdivision (a), but this court reversed that

count on appeal and remanded the case for resentencing. (*People v. Cruz* (Aug. 18, 2015, E060552 [nonpub. opn.].) We affirm.

FACTS AND PROCEDURE¹

On May 4, 2013, defendant ran a stop sign. When a police officer attempted to conduct a traffic stop, defendant fled on his motorcycle. Defendant hit speeds up to 70 miles an hour before crashing into a guardrail. Defendant was transported to a hospital for treatment. During an examination, the treating doctor pulled a plastic bag the size of a golf ball out of defendant's rectum. Lab tests determined the bag contained 2.89 grams of methamphetamine.

On October 21, 2013, the People filed a second amended information charging defendant in count 1 with evading an officer with willful disregard for the safety of others and in count 2 with transporting a controlled substance, methamphetamine. The People also alleged defendant had a prior strike conviction.

On October 22, 2013, a jury found defendant guilty of both charges. The jury instructions for the transportation count listed as an element of the crime that, "The defendant transported a controlled substance." The instructions did not require that the drugs be "transported for sale."

On November 12, 2013, the trial court found true the strike prior allegation.

¹ The facts and procedure are taken from this court's opinion in defendant's prior appeal. (*People v. Cruz, supra*, E060552.) In an order dated November 7, 2016, this court granted defendant's request for judicial notice of the record in case No. E060552.

On January 1, 2014, Assembly Bill No. 721 (2013-2014 Reg. Sess.) went into effect. Assembly Bill No. 721 amended subdivisions (a) and (c) of Health and Safety Code section 11379 to add the requirement that the transportation be “for sale.”

On January 24, 2014, the court sentenced defendant to the aggravated term of four years for the drug transportation, doubled to eight years for the strike prior, plus 16 months for the evasion count, to be served consecutively.

On August 18, 2015, this court reversed the transportation conviction and remanded the case to the trial court for resentencing.

On February 23, 2016, the trial court resentenced defendant on the evasion charge to the aggravated term of three years, doubled to six years for the prior strike conviction. The court left in place defendant’s presentencing custody credit of 263 actual days and 263 conduct days under Penal Code section 4019, as initially imposed on January 24, 2014.

This appeal followed.

DISCUSSION

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no error.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

MILLER
J.

SLOUGH
J.